

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90

³ See *Connect America Fund*, WISPA Petition for Partial Reconsideration, WC Docket No. 10-90, note 5 (filed July 3, 2013) (“WISPA Petition”) (*referencing* December 29, 2011 petitions for reconsideration filed by ViaSat, Inc., NTCH, Inc., and WISPA).

changed such that a carrier would not be eligible for support if an unsubsidized competitor provided either voice or broadband services, rather than on the basis that such a competitor provided *both* of those services. The Commission has determined that voice is an essential service that must be offered by all Eligible Telecommunications Carriers (“ETCs”) under the Communications Act.⁴ The Bureau should complete its work on CAF Phase II implementation to bring much-needed support to high-cost areas that rely on support for both voice and broadband capability. Granting the WISPA request would deny critical support to areas where voice service, not to mention broadband capability, would not be feasible in the absence of support.

Moreover, contrary to WISPA’s claim, the definition of an unsubsidized competitor is settled, and unambiguously includes both “residential fixed voice and broadband service.”⁵ The definition is effective, and carriers and the Wireline Competition Bureau (the “Bureau”) have been laboriously working on CAF implementation according to the definition of an unsubsidized competitor adopted in the *USF/ICC Transformation Order*.⁶ Carriers have spent long hours evaluating their networks and comparing their service territories to the information set forth in the various versions of the National Broadband Map (“NBM”) to determine what census blocks meet the definition of unserved by an unsubsidized competitor. The Bureau and the price cap companies have relied on the definition of an unsubsidized competitor as part of the

⁴ *USF/ICC Transformation Order*, ¶ 81.

⁵ See 47 C.F.R. § 54.5; see also WISPA Petition at 2.

⁶ See *Connect America Fund*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 103 (2011) (“*USF/ICC Transformation Order*”) (“We define an unsubsidized competitor as a facilities-based provider of residential terrestrial fixed *voice and broadband service*.”) (emphasis added).

monumental effort to develop the Connect America Model (“CAM”) for areas eligible for support CAF Phase II. Deferring the challenge process would unnecessarily and unreasonably delay the Commission’s long-term broadband expansion goals, and potentially its short-term expansion goals.⁷ The petitions for reconsideration filed by ViaSat, NTCH, and WISPA should not be permitted to counteract the significant progress made toward implementing CAF Phase II.

DISCUSSION

I. Voice Services Must Be Supported Under the Communications Act

The definition of an unsubsidized competitor is based on more than an “apparent requirement” that both voice and broadband be provided by a single entity. While the requirement to use high-cost support to expand *broadband* is a relatively new requirement implemented in the *USF/ICC Transformation Order*, the requirement that support be used for the provision of *voice* services is a Commission requirement that predates the 1996 Telecom Act, was codified in the 1996 Act, and was not changed by *USF/ICC Transformation Order*.

⁷ WISPA’s request for a deferral of the CAF Phase II challenge process is tantamount to a motion for stay of the Bureau’s CAF Phase II Challenge Order. Yet, WISPA has not satisfied the four-factor test that the Commission applies in determining whether to stay the effectiveness of one of its orders. Specifically, WISPA has not demonstrated that (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest favors granting a stay. *See Connect America Fund; High-Cost Universal Service Support*, Order, 27 FCC Rcd 7158, ¶ 5 (2012) (*citing Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) and *Washington Metropolitan Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977)). Requesting a deferral through a petition for reconsideration appears to be a disguised attempt to seek relief that should have been requested through a motion for stay and subject to the standards required for granting a stay.

In the *USF/ICC Transformation Order*, the Commission decided that its requirements for universal service required updating to ensure that “robust, affordable *voice and broadband service*, both fixed and mobile, are available to Americans throughout the nation.”⁸ The Commission never gave any indication that it would cease to uphold the statutory commitment to universal and affordable voice service.⁹ Rather, the Commission resolved to “ensure that all Americans are *served by networks that support high-speed Internet access—in addition to basic voice service*—where they live, work, and travel.”¹⁰

Stressing the need to be consistent with section 254(b) of the Communications Act, which specifies that *all* consumers must have access to reasonably comparable telecommunications and information services at reasonably comparable rates, the Commission still requires ETCs receiving universal service support to “offer voice telephony service, including *voice telephony service offered on a standalone basis*, at

⁸ *USF/ICC Transformation Order*, ¶ 1 (emphasis added).

⁹ The Act requires that: “Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” 47 U.S.C. §254(b)(3). The Commission explains that its efforts to modernize and refocus universal service was guided by the principle of making “affordable broadband available to all Americans and accelerate the transition from circuit-switched to IP networks, with voice ultimately one of many applications running over fixed and mobile broadband networks.” *USF/ICC Transformation Order*, ¶ 11. The Commission has consistently focused on the *services* delivered to end-users, rather than any particular technology, with voice being consistently at the core of the supported services. *Id.*, ¶81.

¹⁰ *USF/ICC Transformation Order*, ¶ 5 (emphasis added).

rates that are reasonably comparable to urban rates.”¹¹ It is clear that the Commission continues to require voice as a mandatory ETC offering under the Act.

II. Determining An Area Is “Served” Based On The Presence Of An Unsubsidized Broadband-Only Provider Would Result In Loss Of Affordable Voice Services In High-Cost Areas

Areas that previously had access to affordable voice service based on their ETC’s receipt of high-cost universal service support still require that support in order to maintain access to affordable voice services. The Commission’s determination to withdraw high-cost support in areas served by an unsubsidized competitor was based on the finding that, in such cases, the market has demonstrated that no such support is necessary to ensure the availability of affordable voice and broadband service. In contrast, the presence of a broadband-only provider offers no evidence that the market can deliver *voice and broadband* on an unsupported basis and, thus, the Commission’s policy rationale does not apply. If the definition of unsubsidized competitor were modified as requested by the petitioners, to allow the presence of an unsubsidized broadband-only provider to disqualify an area from receiving high-cost support, the ETC that has served as the provider of last resort (“POLR”) for critical voice services would in many cases be unable to continue to offer reasonably comparable, affordable voice services in the affected area leaving unmet the needs of the customer – and the requirement of the statute – for voice service.

¹¹ *USF/ICC Transformation Order*, ¶ 81 (emphasis added). The Commission explained, “[w]ith respect to ‘standalone service,’ we mean that consumers must not be required to purchase any other services (*e.g.*, broadband) in order to purchase voice service.” *See id.*, note 117.

There is no provision under CAF Phase II for partial support to carriers providing only voice services. If the petition were granted, high-cost support would be denied not only for broadband but also for voice services. Since most consumers in high-cost areas would not be able to pay the full cost of obtaining unsubsidized voice services, POLRs would be left with no sustainable business model to continue voice service operations.¹² If consumers in high-cost areas do not have access to affordable voice services, the Commission will have failed to comply with the requirements of Section 254 of the Communications Act, as well as its stated policies in the *USF/ICC Transformation Order*.¹³

Unless a wireless Internet service provider (“WISP”) can demonstrate that it provides voice services as well as broadband services without support, the Commission should not allow the presence of a WISP to disqualify an area as eligible for CAF Phase II support.¹⁴ As ACS noted in its Petition for Waiver of Sections 54.312(b)(2) and (3) to

¹² ACS has already stated on the record what the impact of such a change would be in Alaska: If CAF support were denied in rural Alaska census blocks due merely to the presence of a broadband-only Wireless Internet Service Provider (“WISP”), voice service could disappear from those areas altogether. *See Connect America Fund; Service Obligations For Connect America Phase II, Defining Unsubsidized Competitor*, Comments of Alaska Communications Systems, WC Docket No. 10-90, DA 13-284 at 11 (filed March 28, 2013) (“ACS Unsubsidized Competitor Comments”).

¹³ *See also* ACS Unsubsidized Competitor Comments at 11.

¹⁴ Notably, in the Commission’s Order announcing a second round of Connect America Phase I incremental funding, the Commission made clear that when a price cap carrier contests the classification of a census block as served by broadband, the “Bureau may consider such evidence as statements from residents of an area noting that they have attempted and failed to receive service from a putative unsubsidized competitor.” *Connect America Fund*, Report and Order, 28 FCC Rcd 7766, ¶ 33 (2013). Also, while not dispositive, the Commission added that it would consider statements by a price cap carrier that it has not ported a telephone number to a provider shown on the National Broadband Map as serving a block with service that meets the 3 Mbps/768 kbps proxy as relevant evidence regarding whether that provider is providing service in the area. *See id.*,

use CAF Phase I incremental support in areas of Alaska that the Bureau believes are served by WISPs, the WISPs in question “are not considered to be providers of ‘telecommunications’ under the Act.”¹⁵ They do not appear to offer standalone voice service, they do not advertise in a manner that makes clear that their “broadband” services are capable of delivering required speeds, and they have reported service areas that do not appear to reflect the number of customers they actually serve.¹⁶ Yet, when the Bureau informed ACS that “hundreds of census blocks, covering over 2,100 of the locations that ACS had initially targeted for new broadband services, [were] actually shown as ‘served’ by fixed wireless providers on the National Broadband Map,” it became clear that if these WISPs were considered unsubsidized competitors despite their unverified service offerings, they would significantly reduce the number of locations eligible for broadband expansion in CAF Phase I.¹⁷ Allowing such WISPs to disqualify an area as eligible for CAF Phase II support will significantly undermine the availability of voice services in high-cost areas.

note 68. This type of evidence addresses the requirement to provide voice and broadband service before an entity is considered to be an unsubsidized competitor that can disqualify census blocks as eligible for the second round of CAF Phase I incremental support. Arguably, this was an implicit requirement in round one of CAF Phase I incremental support.

¹⁵ *Connect America Fund; Petition for Waiver of Section 54.312(b)(2) and (b)(3) of the Commission’s Rules of ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc.*, Petition for Waiver, WC Docket Nos. 10-90 and 05-337 at 16 (filed Sept. 26, 2012) (“ACS Petition for Waiver”), citing *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 12-228, Comments of the Wireless Internet Service Providers Association at Exhibit 1 (filed Sept. 20, 2012).

¹⁶ See generally ACS Petition for Waiver at 17-19.

¹⁷ ACS Petition for Waiver at 15.

III. Changing The Definition Of An Unsubsidized Competitor Now Would Be Contrary To The Public Interest

Even if the WISPA Petition were to represent a viable alternative FCC policy choice – which it does not – a reversal of policy on the definition of an unsubsidized competitor at this late date would disserve the public interest because of the considerable Commission and industry resources already expended on implementing the universal service reforms mandated by the *USF/ICC Transformation Order*.

Much of the work done to implement CAF Phase II is predicated on understanding what census blocks are unserved by an unsubsidized competitor. The Bureau and the price cap carriers both have devoted extraordinary efforts over several years toward implementing the *USF/ICC Transformation Order*, including extensive work on a complex CAM for areas unserved by an unsubsidized competitor as defined by the Commission. ACS, though it is one of the smallest price cap carriers, has even developed its own model to address Alaska-specific criteria for support. These modeling efforts depend in part on a common understanding of what census blocks will be eligible for high-cost support in CAF Phase II. It would disserve the public interest to revisit the definition of served and unserved at this point, or to delay the challenge process, when the Bureau is nearing completion of the CAM.

CONCLUSION

For the foregoing reasons, the Bureau should not grant the WISPA Petition for Partial Reconsideration, but should continue to move forward with the planned CAF Phase II challenge process.

Respectfully submitted,

/s/

Leonard Steinberg
General Counsel and Corporate Secretary
Richard R. Cameron
Assistant Vice President & Senior Counsel
ALASKA COMMUNICATIONS SYSTEMS GROUP, INC.
600 Telephone Avenue
Anchorage, Alaska 99503
(907) 297-3000

Karen Brinkmann
Robin Tuttle
KAREN BRINKMANN PLLC
555 Eleventh Street, NW
Mail Station 07
Washington, D.C. 20004-1304
(202) 365-0325
KB@KarenBrinkmann.com

Counsel for ACS

August 7, 2013